

Federal Communications Commission

Before the
Federal Communications Commission
Washington, D.C. 20554

2001 OCT 29 A 11:12

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(St. Augustine and Neptune Beach,
Florida)

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MM Docket No. 01-101
RM-10097

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REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 17, 2001

Released: October 26, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it the Notice of Proposed Rule Making, DA 01-1083, released April 27, 2001, [66 FR 26825 (May 15, 2001)] ("Notice"), issued in response to a petition for rule making filed by Clear Channel Broadcasting Licenses, Inc. ("Clear Channel") licensee of Station WFKS(FM), Channel 250C2, St. Augustine, Florida. Clear Channel requested the reallocation of Channel 250C2 to Neptune Beach, Florida, as that community's first local aural transmission service, and the modification of Station WFKS's license to specify Neptune Beach as its community of license. Clear Channel filed comments reaffirming its proposal and reiterating its intent to implement its proposal if the reallocation of Channel 250C2 to Neptune Beach occurs. No other party filed comments or any other pleading in this proceeding. In response to a staff inquiry, Clear Channel filed additional information concerning its compliance with the criteria set forth in Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988), to demonstrate that Neptune Beach is sufficiently independent of Jacksonville to merit a first local service preference. For the reasons stated below, we grant Clear Channel's request to change its community of license to Neptune Beach.

2. Clear Channel filed its request to reallocate Channel 250C2 to Neptune Beach, Florida, pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹

3. The Notice in this proceeding observed that Clear Channel argues that the reallocation of Channel 250C2 from St. Augustine (1990 U.S. Census population of 11,692 persons) to Neptune Beach (1990 U.S. Census population of 6,816 persons) is to be preferred under the Commission's allotment priorities because it would provide Neptune Beach with its first local aural transmission service (priority 3).² Neptune Beach is located within the Jacksonville

¹ See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

² See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1992). The allotment priorities are:

Urbanized Area. In this light, Clear Channel provided information to demonstrate that Neptune Beach is independent of the urbanized area pursuant to the criteria set forth in Tuck, supra, and warrants being considered as a first local aural transmission service under priority (3).³ Those criteria include (1) signal population coverage; (2) the size and proximity of the suburban community to the central city; and (3) the interdependence or independence of the suburban community to the central city of the urbanized area. 3 FCC Rcd 7374 at 5377-78.⁴

4. With regard to the Tuck criteria, the city of Neptune Beach is located 25 kilometers (15.6 miles) east of the city reference coordinates of Jacksonville, Florida. The facilities proposed by Clear Channel at Neptune Beach would place a 70 dBu contour over 95.3 percent of the Jacksonville Urbanized Area. There are no white or gray service areas within the proposed gain or loss areas. All of the gain area currently receives well over five aural services, and all of the loss area will continue to receive over five aural services. Further, St. Augustine, the community to which Station WFKS is currently assigned, will continue to be the community of license of five radio stations.⁵ Neptune Beach is an incorporated community with a 1990 U.S. Census population of 6,816 persons. Neptune Beach's independence from Jacksonville is demonstrated by the facts that it has its own city government including an elected mayor and city council and an appointed city manager (factor 4 under the Tuck factors, supra at note 4) and provides its residents an extensive variety of municipal services, including its own police and fire departments, parks, sewage plant and water works (factor 8 under the Tuck factors). Neptune Beach also has its own health care and commercial facilities. Among its retail establishments, the city has four grocery stores, two pharmacies, five beauty salons, two hotels, three banks, and over a dozen restaurants (factor 6 under the Tuck factors). In addition, Neptune has its own zip code, thus satisfying factor 5 of the Tuck factors.⁶ As to Tuck factor 1 which asks to what extent community residents work in Jacksonville, Clear Channel notes that this information is not available, but asserts that, based on 1990 U.S. Census information, Neptune Beach has 3,766

(1) first full-time aural service; (2) second full-time aural service; (3) first local service, and (4) other public interest matters [co-equal weight is given to priorities (2) and (3)].

³ See also Huntington Broadcasting Co. v. FCC ("Huntington "), 192 F.2d 33 (D.C. Cir. 1951).

⁴ In Tuck, the Commission set forth eight factors in assessing the independence of a specified community: (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own local telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries.

⁵ These stations include educational stations WFCF(FM), Channel 203A, and WAYL, Channel 220A; commercial FM Station WSOS, Channel 231C3, and AM stations WFOY, 1240 kHz, and WAOC, 1420 kHz.

⁶ See Jupiter and Hobe Sound, Florida, 12 FCC Rcd 3570, 3572-3573 (1997).

jobs, which would be sufficient to employ more than a majority of Neptune Beach's 6,816 residents. We agree with Clear Channel that such a substantial opportunity for employment in Neptune Beach suggests that Neptune Beach is not dependent on Jacksonville for its residents' employment.⁷ Under Tuck factor 3, which asks whether community leaders and residents perceive the community as distinct from the central city of the relevant urbanized areas, Clear Channel has provided three declarations from leaders and residents of Neptune Beach which state that the residents of Neptune Beach think of themselves as a "distinct community around which their interests coalesce."

5. We note that we have considered a community as independent when a majority of the Tuck factors demonstrate that the community is distinct from the urbanized area. See, e.g., Parker and St. Joe, Florida, 11 FCC Rcd 1095 (1996). Neptune Beach has clearly met this standard. In light of the evidence described in the preceding paragraph of this Report and Order, we conclude that Neptune Beach, although located within the Jacksonville Urbanized Area, should be treated as a separate and distinct community and should not be credited with transmission services licensed to Jacksonville.

6. Having made the foregoing decisions, we must determine whether Clear Channel's proposal would result in a preferential arrangement of allotments. To do so, we must compare the existing and proposed arrangements of allotments using the allotment priorities set forth in Revision of FM Assignment Policies and Procedures, supra at note 2. Since Neptune Beach would receive its first local aural transmission service (priority 3), Clear Channel's proposal to serve Neptune Beach is favored over the retention of the allotment at St. Augustine (priority 4). Based upon the foregoing, we believe that the public interest would be served by reallocating Channel 250C2 from St. Augustine to Neptune Beach. Therefore, in accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the license of Station WFKS(FM) to specify operation on Channel 250C2 at Neptune Beach, Florida.

7. As stated in the Notice, Channel 250C2 can be allotted to Neptune Beach, Florida, in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, utilizing Clear Channel's requested site at the coordinates of 30-16-53 North Latitude and 81-34-15 West Longitude.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective December 10, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
St. Augustine, Florida	231C3
Neptune Beach, Florida	250C2

⁷ See Jupiter and Hobe Sound, Florida, supra.

9. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Clear Channel Broadcasting Licenses, Inc. for Station WFKS(FM), St. Augustine, Florida, IS MODIFIED to specify operation on Channel 250C2 at Neptune Beach, Florida, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. Pursuant to Commission Rule Section 1.1104(l)(k) and (3)(m), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Clear Channel Broadcasting Licenses, Inc., licensee of Station WFKS(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license.

11. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

12. For further information concerning the above, contact R. Barthen Gorman, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau